

ESTTA Tracking number: **ESTTA563755**

Filing date: **10/08/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Nelvana International Limited
Granted to Date of previous extension	10/09/2013
Address	228-230 Airport House Shannon Free Zone Shannon, County Claire, IRELAND
Attorney information	Jonathan D. Reichman, Esq. Kenyon & Kenyon LLP One Broadway New York, NY 10004 UNITED STATES tmdocketny@kenyon.com Phone:212-425-7200

### Applicant Information

Application No	85828400	Publication date	06/11/2013
Opposition Filing Date	10/08/2013	Opposition Period Ends	10/09/2013
Applicant	Cayard, Henri R 14 Christopher Street Apt#2 New York, NY 10014 UNITED STATES		

### Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	1665091	Application Date	08/29/1989
Registration Date	11/19/1991	Foreign Priority Date	NONE
Word Mark	BABAR		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1988/12/00 First Use In Commerce: 1988/12/00 CLOTHING; NAMELY, SWEATSHIRTS, TANK SHIRTS, CROP TOPS, APRONS, SMOCKS, DRESSES, SKIRTS, PANTS, T-SHIRTS, PAJAMAS, SLEEPERS, JOGGING SUITS, JACKETS [ , RAIN COATS, SLIPPERS, RUNNING SHOES, HATS, GLOVES ]

Attachments	BABAROC - Notice of Opposition.pdf(424773 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jonathan D. Reichman/
Name	Jonathan D. Reichman, Esq.
Date	10/08/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of : Henri R. Cayard  
Serial No. : 85/828,400  
Filed : January 21, 2013  
For : BABAROC

Published Official Gazette  
Page TM 924  
June 11, 2013

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NELVANA INTERNATIONAL :  
LIMITED, :  
 :  
Opposer, :  
 :  
vs. :  
 :  
HENRI R. CAYARD, :  
 :  
Applicant. :  
-----X

Opposition No. \_\_\_\_\_

NOTICE OF OPPOSITION

Opposer Nelvana International Limited, an Irish corporation with a place of business at 228-230 Airport House, Shannon Free Zone, Shannon, County Clare, Ireland, believes that it will be damaged by registration of the above-identified mark, and hereby opposes the registration of said mark. The grounds of opposition are as follows:

1. By the application herein opposed, Applicant Henri R. Cayard is seeking to obtain, under the provisions of the Trademark Act of 1946 (15 U.S.C. § 1051 *et seq.*), registration for the mark "BABAROC" for "athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms" in International Class 25. Applicant filed his application on January 21, 2013.

2. Applicant filed his application under 15 U.S.C. § 1051(b), and, on information and belief, has not yet commenced commercial use of the subject mark.

3. Since at least as early as December 1988-- *i.e.*, almost twenty five years prior to Applicant's filing date-- Opposer (including its predecessor-in-interest and related entities) has used "BABAR"<sup>®</sup> as a trademark for clothing and apparel.

4. Opposer is the owner of Registration No. 1,665,091 on the Principal Register of the United States Patent and Trademark Office for the mark "BABAR"<sup>®</sup> in International Class 25 covering sweatshirts, tank shirts, crop tops, aprons, smocks, dresses, skirts, pants, t-shirts, pajamas, sleepers, jogging suits, and jackets. This registration issued on November 19, 1991; was last renewed on November 18, 2011; and is currently in full force and effect. Opposer's registration issued prior to Applicant's application date, and consequently there is no question of priority of rights, such priority clearly belonging to Opposer. Moreover, this registration is incontestable under 15 U.S.C. §1065.

5. Through Opposer's exploitation activities, and through the extensive promotional and advertising activities of Opposer and its licensees connected therewith, the public and trade have come to associate the trademark "BABAR"<sup>®</sup> with Opposer and its products.

6. By virtue of its prior use in commerce of "BABAR"<sup>®</sup>, Opposer is entitled to hold itself out to the public and trade as having the exclusive right to use "BABAR"<sup>®</sup> as a trademark. Registration of Applicant's mark would be inconsistent with such right of Opposer.

7. Substantial efforts have been devoted by Opposer to advertise and promote its goods under Opposer's "BABAR"<sup>®</sup> trademark. Opposer, by its aforesaid use of "BABAR"<sup>®</sup> and by its promotional efforts in connection therewith, has built up valuable goodwill associated with this mark. As a result of the long use, advertising and promotion by Opposer, said mark has

acquired secondary meaning in the minds of both the trade and public in connection with Opposer and its products. Moreover, Opposer's "BABAR"<sup>®</sup> trademark constitutes a famous mark under 15 U.S.C. § 1125(c)(1). Opposer's "BABAR"<sup>®</sup> trademark acquired such fame well prior to Applicant's filing date.

8. Applicant's "BABAROC" mark for which he seeks registration is confusingly similar to Opposer's "BABAR"<sup>®</sup> trademark. Moreover, Applicant's mark is allegedly intended to be used on and in connection with goods which are identical, similar and/or related to goods on and in connection with which Opposer has used and/or registered its "BABAR"<sup>®</sup> mark. As a result, Opposer holds rights in the term "BABAR"<sup>®</sup> and variations thereof which are superior to the rights of Applicant with respect to Applicant's proposed goods.

9. If Applicant is granted a registration for the mark herein opposed, he would obtain thereby at least the *prima facie* exclusive right to use such mark. Such registration would be a source of damage and injury to Opposer, on at least the grounds set forth below.

10. Registration should be denied under Lanham Act Section 2(d) (15 U.S.C. §1052(d)), because Applicant's mark is confusingly similar to Opposer's "BABAR"<sup>®</sup> trademark. Applicant's proposed use and registration of his mark is likely to cause injury to Opposer's rights in its "BABAR"<sup>®</sup> mark, and such use and registration will inevitably cause confusion and mistake and will deceive the public and trade into believing that Applicant's goods are affiliated with, sponsored by, or jointly developed with Opposer, and that such goods emanate from the same source, and/or that Applicant is in some other fashion connected with Opposer, all to Opposer's injury.

11. If Applicant is permitted to register his mark so as to claim exclusive rights therein, confusion among the public and trade will result, causing damage and injury to Opposer.

Members of the public and trade familiar with Opposer's "BABAR"<sup>®</sup> trademark would be likely to believe (and would be justified in so believing) that Applicant's goods originate from Opposer, or an entity in some way associated with Opposer, or are licensed or authorized by Opposer or with Opposer's approval. Furthermore, any objection or fault found with Applicant's goods would necessarily reflect upon and seriously injure the reputation which Opposer has established in connection with the goods exploited by Opposer under its "BABAR"<sup>®</sup> mark.

12. Registration should also be denied under Lanham Act Section 43(c) (15 U.S.C. § 1125(c)). Applicant's mark will dilute the distinctive quality of Opposer's famous "BABAR"<sup>®</sup> trademark, thereby causing further damage to Opposer.

13. Consequently, Applicant's alleged mark does not and cannot exclusively identify the goods in connection with which it is allegedly proposed to be used as the goods of Applicant, nor can it distinguish those goods from the goods of Opposer, nor can it serve as an indication of source or origin of Applicant's goods.

14. By reason of the foregoing, Applicant's registration of the mark herein opposed will cause damage and injury to Opposer, and to Opposer's rights in its "BABAR"<sup>®</sup> mark, and to the use thereof as described herein.

15. For the above reasons, Applicant's mark should be denied registration under 15 U.S.C. §§ 1052(d) and 1125(c).

16. The statutory fee of three hundred dollars (\$300.00), and any additional required fees, should be charged to the undersigned's Deposit Account No. 11-0600.

WHEREFORE, Opposer prays that Application Serial No. 85/828,400 be rejected, and that the registration of the mark therein sought for the goods therein specified be denied and refused, and that this Opposition be sustained.

Dated: 10/8/13

KENYON & KENYON LLP

By: 

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Attorneys for Opposer

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document, entitled "Notice of Opposition," was served by first class mail, postage prepaid, on this 8<sup>th</sup> day of October, 2013, on Applicant, as follows:

Mr. Henri R. Cayard  
14 Christopher Street, Apt. No. 2  
New York, New York 10014-3523



Jonathan D. Reichman